

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

LEVON COTTON,

Plaintiff,

Civil Action No. 13-CV-13170
Honorable Denise Page Hood

v.

E. CERNY, WAYNE GROAT, D.
McCOY, E. SCHOENDORF, K.
SCHALKI, A. SALERNAS, SUSAN
HAVELKA, C. PRICE, L.
STEMPEK, R. HEINZE, STEVEN
RIVARD, A. HAWKINS,

Defendants.

**ORDER ACCEPTING REPORT AND RECOMMENDATION TO GRANT
MDOC DEFENDANTS' MOTION FOR SUMMARY JUDGMENT [#19]
AND DEFENDANT GROAT'S MOTION FOR SUMMARY JUDGMENT
[#24] AND DISMISSING PLAINTIFF'S COMPLAINT [#1] WITHOUT
PREJUDICE**

Now before the Court is Magistrate Judge David Grand's Report & Recommendation [**Docket No. 27, filed March 11, 2014**] in which Magistrate Grand recommends that this Court **GRANT** the Defendants' Motion for Summary Judgment [**Docket No. 19, filed November 13, 2013**] as well as Defendant Wayne Groat's Motion for Summary Judgment. [**Docket No. 24, January 7, 2014**] Plaintiff Levon Cotton has not filed a response to either motion though the Court filed an Order to Show Cause Why Defendants' Respective Motions to Dismiss Should Not Be

Recommended Granted as Unopposed, requiring that Plaintiff file a response to the Show Cause Order by March 3, 2014. **[Docket No. 26, filed February 13, 2014]** Plaintiff also failed to respond to the Order to Show Cause.

In the Report and Recommendation, Magistrate Judge Grand further recommends that this Court **DISMISS** Plaintiff Levon Cotton's Complaint, without prejudice. Neither party has filed an objection to Magistrate Grand's Report & Recommendation within the time provided under 28 U.S.C. § 636(b)(1) and E.D. Mich. LR 72.1(d). Failure to file specific objections constitutes a waiver of any further right of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985); *Howard v. Sec'y of Health & Human Servs.*, 932 F.2d 505 (6th Cir. 1991); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

The Court has had an opportunity to review this matter and finds that the Magistrate Judge reached the correct conclusion for the proper reasons. Despite the fact that Plaintiff failed to respond to Defendants' motions or the Court's Motion to Show Cause, Magistrate Judge Grand reviewed the record as though he did and completed an analysis of Plaintiff's claims, determining that "[t]he uncontested record establishe[d] that [Plaintiff] had not exhausted his grievance at the time he filed the instant action, since he filed his complaint even prior to receiving a response to his Step II grievance, let alone before completion of the entire grievance process."

[Docket No. 27, Pg ID 174] Magistrate Judge Grand concluded that because

Plaintiff had not “properly exhaust[ed] the claims alleged in his grievance to allow him to file suit in this Court . . . Defendants are entitled to summary judgment on [Plaintiff’s] complaint.” **[Id. At Pg ID 175]** The Court agrees.

Accordingly,

IT IS ORDERED that the Report and Recommendation of Magistrate Judge David Grand **[Docket No. 27, filed March 11, 2014]** is **ACCEPTED** and **ADOPTED**.

IT IS FURTHER ORDERED that Defendants, E. Cerny, Susan Havelka, A. Hawkins, R. Heinze, D. McCoy, C. Price, Steven Rivard, A. Salenas, K. Schalki, E. Schoendorf, and L. Stempek’s Motion for Summary Judgment **[Docket No. 19, filed November 13, 2013]** is **GRANTED**.

IT IS FURTHER ORDERED that Defendant Wayne Groat’s Motion for Summary Judgment **[Docket No. 24, January 7, 2014]** is **GRANTED**.

IT IS FURTHER ORDERED that this matter is **DISMISSED**, without prejudice, and the case **CLOSED**.

IT IS SO ORDERED.

Dated: August 28, 2014

S/Denise Page Hood
Denise Page Hood
United States District Judge

I hereby certify that a copy of the foregoing document was served upon counsel of record on August 28, 2014, by electronic and/or ordinary mail.

S/LaShawn R. Saulsberry

Case Manager